

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
at CHATTANOOGA

In Re:	)	MDL Case No. 1:03-md-1552
	)	
	)	<i>Securities Fraud, Derivative, and</i>
UNUMPROVIDENT CORP.	)	<i>ERISA 401(k) Actions</i>
SECURITIES, DERIVATIVE, &	)	
ERISA LITIGATION	)	Judge Curtis L. Collier
	)	Magistrate Judge Clifford Shirley

**MEDIATION ORDER**

This Order relates to the various putative securities fraud class action lawsuits, consolidated shareholder derivative actions, and consolidated ERISA 401(k) class actions which are included in Multidistrict Litigation No. 1552 (“MDL-1552”) (collectively “Securities Related Actions”). Pursuant to E.D.TN. L.R. 16.4, the Court **ORDERS** that mediation be conducted in the Securities Related Actions and that such mediation shall take place simultaneously with discovery and pretrial litigation. Lead Counsel for the various parties to the Securities Related Actions shall coordinate their mediation efforts and mediation shall be conducted as soon as practicable and in good faith.

As contemplated by § VII of the Court’s Second Management Order (Master File No. 34), the Court has solicited and considered the opinions and preferences of the parties and hereby appoints the following individual to serve as mediator for the Securities Related Actions:

W. J. Michael Cody  
Burch, Porter & Johnson, PLLC  
130 North Court  
Memphis, TN 38103  
901-524-5000

Within forty-five (45) days of the entry of this Order, Lead Counsel in each of the Securities Related

Actions (or another attorney selected by Lead Counsel to handle mediation) and counsel for each of the various Defendants shall meet with Mr. Cody. At this meeting counsel shall discuss with Mr. Cody the development of a comprehensive plan and framework for mediation. Among other issues the parties may decide are appropriate, this plan should encompass the following issues:

- (a) when mediation can begin,
- (b) what discovery must be obtained prior to the start of mediation,
- (c) what discovery is necessary to allow the parties to ascertain the identity of members of the class and its size,
- (d) how to structure discovery to facilitate mediation,
- (e) information on UnumProvident's financial condition to the extent the parties decide such information is relevant,
- (f) milestones or target dates for the accomplishment of certain mediation goals, and
- (g) any other information Lead Counsel needs in order to prepare for mediation.

Within five (5) days of the meeting each Lead Counsel or his designee and counsel for Defendants shall file with the Court a joint report confirming that they met with Mr. Cody. If any party has any objection to Mr. Cody serving as mediator, such objections must be submitted within five (5) days of this meeting.

Within thirty (30) days of the meeting, the parties shall formulate a written comprehensive plan and submit the plan to Mr. Cody for his approval. After approval, it must be submitted to the Court. Any revisions of the approved mediation plan must be approved by Mr. Cody and the Court.

Thereafter, the parties shall submit to the Court on the first day of every second month a joint report on mediation setting out the following:

- (a) their progress in mediation since the last report;
- (b) whether they are on target to accomplish the goals set out in the mediation plan;
- (c) whether they will be able to accomplish the goals set for the next target date;
- (d) if they are behind schedule, how and why they fell behind, and if such failure was the fault of anyone, to identify that person;
- (e) what mediation efforts are planned for the next reporting period; and
- (f) whether additional assistance by the Court is needed to ensure mediation is successful.

These periodic reports shall be shared with Mr. Cody.

Should Lead Counsel in any of the Securities Related Actions select another attorney to be responsible for mediation, that attorney shall have power to bind the plaintiffs whom he represents to the same extent as Lead Counsel. Counsel for Defendants assigned to mediation must also have power to bind Defendants.

Mr. Cody is specifically authorized to explore and suggest creative techniques to assist in mediation. If he desires, he is authorized to meet separately and privately with counsel for each party to engage in confidential discussions to obtain a frank evaluation of each side's case. He is also authorized to explore and suggest such techniques as summary trials, advisory juries, and conferences with decision makers.

Solely for the purpose of mediation, the parties are authorized to engage in limited discovery that would be helpful in mediation. In formulating their discovery requests, Lead Counsel should take care not to duplicate requests for materials already in the possession of Plaintiffs' counsel. Defendants will have forty-five (45) days from receipt of such discovery requests to respond to them. Lead Counsel shall determine whether sufficient information has been voluntarily produced, and whether additional information must be produced before mediation can commence. The parties are required to meet and confer in an attempt to resolve discovery disputes before presenting any such disputes to the Court for resolution.

Assuming Defendants have timely provided sufficient discovery for Plaintiffs to proceed with mediation, the parties shall exchange mediation briefs and deliver them to Mr. Cody within a time limit to be set by Mr. Cody. Mr. Cody will also be responsible for setting a schedule to commence the mediation, keeping in mind the goal of having mediation proceed as quickly as possible.

Mr. Cody is authorized to directly bill the parties periodically for his services. The compensation of the mediator shall be determined by the parties and Mr. Cody in accordance with E.D.TN. L.R. 16.4(i).

**SO ORDERED.**

**ENTER:**

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CURTIS L. COLLIER  
UNITED STATES DISTRICT JUDGE